

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ZELLA MAYE FREEMAN,

1:05-cv-00328-OWW-SMS

Plaintiff,

vs.

**ORDER VACATING PLAINTIFF'S
NOTICED MOTION TO COMPEL**
(Docs. 49, 73)

CITY OF FRESNO, R. GARRISON
(F.P.D. Badge No. 780), MARK
A. YEE (F.P.D. Badge No. 692),
J. CAPRIOLA (F.S.O. Badge No.
7622), I. BARRIMOND (F.S.O.
Badge No. 1153), J. HOLLINS
(F.S.O. Badge No. 2346), R.
PEREZ (F.S.O. Badge No. 6169),
A. SIMONSON (F.S.O. Badge No.
9364), et al.,

Defendants.

Plaintiff's Re-Notice of Hearing on Motion to Compel Re:
Departmental Transfer, hand filed on September 11, 2006 (Doc.
73), is hereby ORDERED VACATED and OFF CALENDAR, without
prejudice, for the following reasons:

1. Pursuant to the Court's Local Rules and, specifically
Local Rule 5-133(a), effective January 3, 2005, available on the
court's web site, "...attorneys shall file all documents
electronically..." (Emphasis added) Despite the fact counsel

1 apparently served the re-noticed motion by facsimile, it was not
2 actually hand filed with the court until September 11, 2006. The
3 hearing date set by counsel, then, would be one (1) week too
4 early pursuant to Local Rule 78-230, even regardless of the
5 following;

6 2. Instead of setting an order to show cause (OSC) hearing
7 regarding plaintiff's counsel's disregard for the requirement to
8 utilize electronic filing, the Court is deeming this motion OFF
9 CALENDAR without prejudice to appropriately re-noticing it after
10 ruling(s) on the motion for summary judgment, currently set to be
11 heard before the Honorable Oliver W. Wanger on October 23, 2006;

12 3. Inasmuch as the parties stipulated to an extended date
13 of September 18, 2006, by which plaintiff's opposition to
14 defendant's motion for summary judgment was due to be filed, the
15 motion to compel will not only draw off the resources of all
16 counsel from preparation for the summary judgment motion but also
17 may be rendered moot by the rulings of the Court; and,

18 4. Finally, this Court finds that the delay in getting
19 this motion appropriately before the court in sufficient time for
20 ruling before the summary judgment motion was due entirely to
21 plaintiff's counsel's error in originally filing and setting the
22 motion before the Honorable Oliver Wanger rather than the
23 undersigned magistrate judge assigned to the case and charged
24 with the task of ruling upon any and all non-dispositive
25 discovery matters. By Minute Order of July 31, 2006 (Doc. 58),
26 plaintiff's motion to compel was vacated with the admonition that
27 the matter be properly noticed before Magistrate Judge Snyder.
28 The motion was not re-noticed for six (6) weeks.

1 **Note:** If plaintiff's counsel does re-file the motion, this
2 Court is not, by virtue of this order, ruling on the timeliness
3 of said motion nor is it to be implied that the Court is granting
4 plaintiff permission to file the motion beyond the cut-off
5 deadline.

6 IT IS SO ORDERED.

7 **Dated: September 15, 2006**

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/s/ Sandra M. Snyder

UNITED STATES MAGISTRATE JUDGE